

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8594 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
- 1 & 2 : YES; 3 to 5 : NO

RAJKUMAR KALLU SAHU DETAINED IN BARODA PRISON

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 20th August, 1998, made by the Commissioner of Police, Surat City, under the powers conferred upon him under sub-section (1) of section 3 of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

3. The petitioner and two other accomplices are alleged to have committed four offences punishable under sections 454, 457, 380 and 114 IPC. All the offences are registered in Pandesara Police Station and are pending investigation. In respect of these offences, the petitioner was arrested and was ordered to be released on bail. In course of investigation, the stolen articles i.e. muddamal articles were recovered from the petitioner and two other accomplices. Along with the muddamal articles, several other stolen articles like TV sets, stabliisers, suit-cases, bicycles and fans were also recovered from the petitioner and his accomplices. Moreover, two witnesses whose identity has been withheld, have informed the police about two other incidents of 7th June, 1998 and 5th July, 1998 respectively. In the said statement, it is stated that the petitioner and his accomplices, believing that the witness was a police informant, had beaten the witness on the public road and had tried to terrorise the crowd gathered there by wielding a sword. On the other occasion, the witness was asked to keep stolen articles in his house and upon refusal, the witness was beaten and the people gathered there were terrorised by wielding a sword. In both the incidents, it is reported that on account of the violence committed by the petitioner and his accomplices, the people had been frightened and the surrounding shops and stalls, etc., were immediately closed. It is, therefore, alleged that the petitioner is a habitual offender and is, therefore, a 'dangerous person'. The petitioner's activities are also found to be prejudicial to the maintenance of public order.

4. The learned advocate Ms. Patel appearing for the petitioner has challenged the order of detention on the grounds - (a) The identity of the witnesses has wrongly been withheld and non-disclosure of the names and other particulars of the witnesses has prejudicially affected the petitioner's right to make an effective representation against the order of detention; (b) In any view of the matter, the petitioner's activities can at the most be considered to be detrimental to the maintenance of law and order, but can not be said to be prejudicial to the maintenance of public order. The activities of the petitioner has not affected the public tranquility or even tempo of life.

5. The petition has been contested by the learned AGP Ms. Punani. She has contended that though

individually committed each of the offences may not amount to breach of public order, the repetition of the similar offence in quick succession would certainly amount to breach of public order. The petitioner's activities are concentrated in the same area and the offences are committed repeatedly in short time. The people living in the said area would certainly be apprehensive about the safety of their property and would create a feeling of insecurity amongst the people residing in that locality. Besides, atleast on two occasions, the petitioner is reported to have resorted to violence and terrorised people gathered there. The petitioner is also reported to have used a lethal weapon for terrorising the people. The aforesaid activities are sufficient to hold that the petitioner's activities are prejudicial to the maintenance of public order.

6. I have perused the grounds of detention and the supporting material. The original statements given by the concerned witnesses are also produced before the court for its perusal. The papers of the Detaining Authority are also before the court. It is indisputable that the petitioner has been indulging into offences punishable under Chapters-XVI and XVII of the IPC, and has committed several such offences. Besides the offences registered against the petitioner and the muddamal in respect of those offences, several other stolen articles have been recovered from the petitioner and his accomplices. The petitioner, therefore, can be said to be a habitual offender and consequentially a 'dangerous person' as defined under section 2 (c) of the Act. The question is whether the petitioner's activities can be said to be prejudicial to the public order or not. For that, reliance has to be placed on the statements given by the witnesses. The statements have been recorded on 30th July, 1998 and 31st July, 1998. After investigation, they have been placed before the Detaining Authority. The Detaining Authority has personally called the witnesses before him and has verified the statements. It is manifest from the grounds of detention that not only the verification has been done by the Detaining Authority himself, but he has ascertained that the contents of the said statements are also true. It is apparent that unless anonymity were assured, the witnesses were not ready and willing to give statements against the petitioner and his accomplices. The apprehension voiced by them has also been found to be genuine by the Detaining Authority. In my view, therefore, the privilege claimed under the powers conferred under section 9 (2) of the Act, can not be said to be unwarranted. Thus, the Detaining Authority having considered the material on record, has recorded the

subjective satisfaction in respect of the petitioner being a 'dangerous person', and 'his activities being prejudicial to the maintenance of public order'.

7. The Supreme Court in the matter of KANUJI S. ZALA VS STATE OF GUJARAT & ORS (1999 {5} SUPREME, 364) has held that " What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. It is also well settled that whether the material was sufficient or not is not for the courts to decide by applying an objective test as it is a matter of subjective satisfaction of the detaining authority ". In view of the above judgment, courts are not supposed to consider whether the materials were sufficient or not by applying an objective test. As referred to hereinabove, the Detaining Authority has satisfied himself of the petitioner's activities being prejudicial to the maintenance of the public order. The assertion made in the grounds of detention is also supported by the affidavit made by the Detaining Authority and the relevant records.

8. No other contention is raised before me.
Petition is, therefore, dismissed. Rule is discharged.

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JOSHI